

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VIVA VINO IMPORT CORPORATION : CIVIL ACTION
Plaintiff, :
 :
vs. :
 :
FARNESE VINI S.r.l. :
Defendant. : NO. 99-6384

MEMORANDUM AND ORDER

O R D E R

DUBOIS, J.

AUGUST 29, 2000

AND NOW, to wit, this 29th day of August, 2000, upon consideration of Plaintiff Viva Vino Import Corporation's Memorandum of Law in Support of the Application of the United Nations Convention on Contracts for the International Sale of Goods and/or Pennsylvania Law to the Contract and Tort Claims Set Forth in Plaintiff's Complaint and Defendant's Counterclaim (Document No. 14, filed June 2, 2000), and Defendant Farnese Vini S.r.l.'s Memorandum of Law Regarding Choice of Law (Document No. 15, filed June 9, 2000), **IT IS ORDERED** that Pennsylvania law shall be applied to the contract and tort claims set forth in plaintiff's Complaint and defendant's Counterclaim.

MEMORANDUM

I. INTRODUCTION

This case arises out of three alleged agreements between plaintiff, Viva Vino Import Corporation, a Pennsylvania corporation and defendant, Farnese Vini S.r.l., an Italian company. The

agreements provided, in essence, for distribution of defendant's wines in Pennsylvania and other parts of the United States by plaintiff.

The Complaint contains four counts - (1) breach of contract; (2) promissory estoppel; (3) unjust enrichment; and, (4) tortious interference with business relations. Defendant's Counterclaim is based on breach of contract.

Plaintiff argues that the United Nations Convention on Contracts for the International Sale of Goods, codified at 15 U.S.C.A. App. 1998 (the "CISG"), and/or Pennsylvania law should apply to all of plaintiff's claims and the Counterclaim. Defendant contends that Italian law should apply to all such claims.

II. DISCUSSION

A. The CISG

The CISG does not apply to tort claims. Consequently, it is inapplicable to plaintiff's claim of tortious interference with business relations.

There is no dispute that both the United States and Italy are signatories to the CISG. When two foreign nations are signatories to the CISG, that Treaty governs contracts for the sale of goods between parties whose places of business are in such nations unless the contract contains a choice of law provision to the contrary. See 15 U.S.C. App. at Art. 1(1)(a); see also Filanto, S.p.A. v. Chilewich Int'l Corp., 789 F.Supp. 1229, 1237

(S.D.N.Y. 1992). The agreements at issue do not contain a choice of law provision.

Defendant challenges the application of the CISG to this case on the ground that none of the agreements at issue had as the subject a particular sale of goods, and none had definite terms regarding quantity and price. See Helen Kaminski Pty. Ltd. v. Marketing Australian Prods., 1997 WL 414137, at *2-3 (S.D.N.Y. July 23, 1997) (refusing to apply the CISG to a distributorship agreement because it did not contain definite terms regarding the price or types of goods to be sold); see also 15 U.S.C.A. App. at Art. 14.

The three agreements between plaintiff and defendant were (1) an exclusive distributorship agreement; (2) an agreement granting plaintiff a 25% interest in defendant; and, (3) a sales commission agreement. None of these agreements were for a specific sale of goods, and none had specific terms as to price and quantity. Although exclusive distributorship agreements are considered contracts for the sale of goods under the Uniform Commercial Code adopted in Pennsylvania, this approach has been rejected in connection with the CISG. See Helen Kaminski, 1997 WL 414137, at *2.

This Court agrees with the rationale adopted by the court in Kaminski and concludes that the CISG does not apply to distributorship contracts that do not cover the sale of specific

goods and contain definite terms regarding quantity and price. Because the agreements at issue in this case do not cover the sale of specific goods and set forth definite terms regarding quantity and price, the CISG is inapplicable. Accordingly, the Court will turn to whether Pennsylvania or Italian law should apply to the case.

B. Pennsylvania Law/Italian Law

Pennsylvania's choice of law rules apply in this diversity-based action. See Klaxon Co. v. Stentor Electric Mfg., Inc., 313 U.S. 487, 496-97 (1941). Under Pennsylvania's choice of law analysis, the Court must first determine whether a false or true conflict exists between the competing forums. See LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996). A false conflict exists where "only one jurisdiction's governmental interests would be impaired by the application of the other jurisdiction's law" or if there is basically no difference between the laws of the jurisdictions. Id. If there is no false conflict, there is deemed to be a true conflict and Courts must determine which jurisdiction has the greater interest in the application of its law. Id. at 1071.

The parties agree that this case presents a true conflict with respect to both the contract and tort claims at issue because Italy's Civil Code mandates a more restrictive approach to contract formation and interpretation than Pennsylvania law, and because

Italy's system of tort recovery is more restrictive than Pennsylvania's. Thus, the Court must determine which jurisdiction - Pennsylvania or Italy - has the greater interest in the application of its law to these claims.

In determining which jurisdiction has the greater interest in a contract dispute, Pennsylvania courts consider the following factors: (1) the place of contracting; (2) the place of negotiation of the contract; (3) the place of performance; (4) the location of the subject matter of the contract; and (5) the domicile, residence, nationality, place of incorporation, and place of business of the parties. See Benevento v. Life USA Holding, Inc., 61 F. Supp.2d 407, 414-15 (E.D. Pa. 1999). Similarly, in determining which state has the most interest in a tort case, courts in Pennsylvania consider: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) the place where the relationship between the parties was centered. See Gaglioti v. Cummings, 55 F. Supp.2d 346, 348 (E.D. Pa. 1999).

Applying the foregoing factors to the contract-based claims, the Court concludes that Pennsylvania has the greater interest in the application of its law. Although the parties disagree as to whether negotiation of the agreements took place in Pennsylvania or Italy, it is clear that performance of the

agreements was centered in Pennsylvania. On this issue, the Court rejects defendant's argument that performance was in Italy because its wines were shipped F.O.B., and that, as a result, defendant was not responsible for the wines once they were delivered to the shipper in Italy. Such terms of shipment certainly affect liability issues, but they do not alter the fact that performance of the contracts was to be primarily in Pennsylvania.

With respect to the tort claims, the Complaint avers that defendant tortiously interfered with plaintiff's existing and prospective economic relations by contacting a number of plaintiff's customers and suppliers in Pennsylvania and other states and giving them false information about plaintiff's ability to perform in the marketplace. That factor and the Court's determination that the underlying relationship between the parties was centered on the distribution of defendant's wines by plaintiff in Pennsylvania leads the Court to conclude that Pennsylvania has the greater interest in the application of its law to the claim of tortious interference with business relations.

III. CONCLUSION

This case involves citizens of Pennsylvania and Italy. Both Pennsylvania and Italy have an interest in the application of its law to the case. However, on balance, the Court is of the opinion that, as between the two jurisdictions, Pennsylvania has the greater interest. Thus, Pennsylvania law will be applied to

all claims asserted in the case.

BY THE COURT:

JAN E. DUBOIS, J.